

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
vs.
RAFAEL AYALA-MENDEZ,

Plaintiff,

Defendant.

CASE NO. 96cr1826-IEG
(related to 07cv984-IEG)

ORDER DENYING CERTIFICATE
OF APPEALABILITY

On June 5, 2007, this Court dismissed defendant Rafael Ayala-Mendez’s “Petition for Consideration of Reduction Sentence under 18 U.S.C. § 3582(c)(2).” The Court found the motion was properly construed as a motion to vacate or set aside the judgment and/or sentence pursuant to 28 U.S.C. § 2255, and determined Defendant must first get permission from the Ninth Circuit Court of Appeals to file a second § 2255 motion. Defendant filed a notice of appeal. On November 23, 2009, the Ninth Circuit Court of Appeals remanded this case for the limited purpose of granting or denying a certificate of appealability.

If a defendant does not first receive authorization from the Court of Appeals to file a second or successive motion under § 2255, the district court lacks jurisdiction to consider the application. United States v. Lopez, 577 F.3d 1053, 1061 (9th Cir. 2009). Defendant has not obtained an order from the Ninth Circuit granting him leave to file a second motion under § 2255.

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1 Therefore, this Court has no jurisdiction to consider the merits of the issues raised by defendant's
2 motion. The Court DENIES a certificate of appealability.

3 **IT IS SO ORDERED.**

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5 **DATED: November 24, 2009**

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IRMA E. GONZALEZ, Chief Judge
United States District Court